THE

AMERICAN LAW REGISTER.

MARCH 1885.

CONSTITUTIONAL REGULATIONS OF LEGISLATIVE PROCEEDINGS.

RULES prescribing forms for the guidance of legislatures are incorporated in many of the state constitutions now in force. These vary in their scope, in some cases extending to a considerable number of requirements, and in others being few in number. They are also expressed in varying terms. Their purpose is the prevention of some of the evils which grew out of legislation when little or no restriction was placed upon the mode of procedure, "as if with the advance toward 'a higher civilization' greater precautions were requisite in legislative matters than in the early days of our state's history."

The English Doctrine.—There are no restrictions upon the Parliament of Great Britain as to the mode of its procedure, and there is no such thing known to English law as the unconstitutional enactment of a statute. There can be no inquiry as to the regularity of an enactment; the enrolled act is a verity: *Rex* v. *Arundel*, Hob. 110; *Prince's Case*, 8 Coke 145. There is no common law in this country in conflict with this: *People* v. *Devlin*, 33 N. Y. 281; *State* v. *Swift*, 10 Nev. 176; *Pangborn* v. *Young*, 32 N. J. L. 29; *Sherman* v. *Story*, 30 Cal. 253; *Falconer* v. *Higgins*, 2 McLean 195; *Pacific Railroad Co.* v. *Governor*, 23 Mo. 362; *Fouke* v. *Fleming*, 13 Md. 412; *Brodnax* v. *Groom*, 64 N. C. 244; *People* v. *Starne*, 35 Ill. 121.

In many cases constitutional regulations of the forms of procedure

are said to be mandatory on legislative bodies; but after action the presumption is that they have been observed, and the courts will not go back of the enrolled act to impeach it. See *Usener* v. *State*, 8 Tex. App. 177; *Central Railway Co.* v. *Hearne*, 32 Tex. 546; *Blessing* v. *Galveston*, 42 Id. 641; *Kilgore* v. *Magee*, 85 Penn. St. 401; *People* v. *Burke*, 34 Cal. 661; *Eld* v. *Gorham*, 20 Conn. 8; *People* v. *Commissioners*, 54 N. Y. 276; *Evans* v. *Browne*, 30 Ind. 514; *Bender* v. *State*, 53 Id. 254; *Commissioners* v. *Burford*, 93 Id. 383; *Edger* v. *Board*, 70 Id. 331; *Lottery Co.* v. *Richoux*, 23 La. Ann. 743; *Green* v. *Weller*, 32 Miss. 650; *Swann* v. *Buck*, 40 Id. 268; *Mayor* v. *Harwood*, 32 Md. 471; *Thompson's Case*, 9 Op. Attys.-Gen. 1; *Miller* v. *State*, 5 Ohio St. 275; *Purdy* v. *People*, 4 Hill 390; *De Bow* v. *People*, 1 Den. 14; *State* v. *Glenn*, 1 West Coast Rep. 50, and cases cited *ante*.

Conflict of Authority.—The rule which seems to be established by these cases has not been uniformly held by several of the courts which decided them. In some states, especially California and Missouri, changes in the fundamental law have necessitated the establishment of a rule different from that announced in the cases cited. But before the constitutions now in force in these states were adopted there was a conflict of authority. In *Fowler* v. *Peirce*, 2 Cal. 165, the court say, by MURRAY, C. J.: "I am of opinion that there is no difference between declaring a law unconstitutional for matters patent upon its face, though passed regularly, and a law apparently good, yet passed in violation of those rules which the constitution has imposed for the protection of the rights and liberties of the citizen." The court held an act which purported to have been approved on a day on which it might legally have been done, void, because as a matter of fact it was approved when the power to do the act did not exist. In *State* v. *McBride*, 4 Mo. 303, the question was whether an amendment to the constitution had been voted for by the required number of members of the legislature, and it appears to have been determined by the record contained in the legislative journals. This case was doubtless overruled by *Pacific Railroad Co.* v. *Governor*, *ante*, which has been overruled by *Bradley* v. *West*, 60 Mo. 33, and *State* v. *Mead*, 71 Id. 266. Both these last cases were decided under the present constitution, which differs materially from that in force when the earlier cases were ruled. *Sherman* v. *Story* has also

been overruled by *Weill* v. *Kenfield*, 54 Cal. 111, under a like change in the fundamental law. The earlier cases in Indiana held to the American doctrine. See *Skinner* v. *Deming*, 2 Ind. 558; *Coleman* v. *Dobbins*, 8 Id. 156. And intimations and *dicta* in its favor are to be found in some of the New York cases, which have been frequently cited in its support. See *People* v. *Purdy*, 2 Hill 31; s. c. in error, 4 Id. 384; *De Bow* v. *People*, 1 Den. 9; *Com. Bank* v. *Sparrow*, 2 Id. 97. The rule in Maryland has been changed by *Berry* v. *Baltimore, etc., Railroad Co.*, 41 Md. 446, and *Legg* v. *Mayor, etc.*, 42 Id. 203. The cases cited from Mississippi must be considered overruled by *Brady* v. *West*, 50 Miss. 68, where the court say: "It is clearly competent to show from the journals of either branch of the legislature that a particular act was not passed in the mode prescribed by the constitution, and thus defeat its operation altogether." Two Iowa cases (*Clare* v. *State*, 5 Iowa 509; *Duncombe* v. *Prindle*, 12 Id. 1) are often cited in support of the doctrine that the enrolled act is conclusive; but they only determine that where there is a conflict between the printed and the enrolled act, the latter is the ultimate proof of the expression of the legislative will. Whether the journals were competent, evidence, or their effect, was not considered in either case: *Koehler* v. *Hill*, 60 Iowa 543.

The American Doctrine.—The power and duty of courts to look behind the enrolled act and determine that it has received the required number of votes, or that in its enactment there has been a substantial compliance with the forms prescribed by the constitution is upheld by a large number of cases: *Skinner* v. *Denning*, 2 Ind. 528; *Post* v. *Supervisors*, 105 U. S. 667; *Smithee* v. *Garth*, 33 Ark. 17; *Hull* v. *Miller*, 4 Neb. 503; *Walker* v. *Griffith*, 60 Ala. 361; *Williams* v. *State*, 6 Lea (Tenn.) 549; *Supervisors* v. *Heenan*, 2 Minn. 330; *Coleman* v. *Dobbins*, 8 Ind. 156; *In re Roberts*, 5 Colo. 525; *In re Welman*, 20 Vt. 656; *Legg* v. *Mayor, &c.*, 42 Md. 203; *Osburn* v. *Staley*, 5 W. Va. 85; *State* v. *Platt*, 2 S. C. 150; *Walker* v. *State*, 12 Ind. 200; *State* v. *Hagood*, 13 Id. 46; *Worthen* v. *Badgett*, 32 Ark. 496; *State* v. *Mead*, 71 Mo. 266; *Smithee* v. *Campbell*, 41 Ark. 471; *South Ottawa* v. *Perkins*, 94 U. S. 260; *Spangler* v. *Jacoby*, 14 Ill. 297; *Prescott* v. *Trustees*, 19 Id. 324; *People* v. *Starne*, 35 Id. 121; *Ryan* v. *Lynch*, 68 Id. 160: *Turley* v. *County of Logan*, 17 Id. 151; *Burr* v. *Ross*, 19 Ark. 250; *Weill* v. *Kenfield*, 54

Cal. 111; *Fordyce* v. *Godman*, 20 Ohio St. 1; *Berry* v. *Baltimore, &c., Railroad Co.*, 41 Md. 446; *Bradley* v. *West*, 60 Mo. 33; *Green* v. *Graves*, 1 Doug. (Mich.) 351; *People* v. *Mahaney*, 13 Mich. 481; *State* v. *Francis*, 26 Kans. 724; *State ex rel.* v. *Hastings*, 24 Minn. 78; *Brown* v. *Nash*, 1 Wyoming 85; *State* v. *Little Rock, &c., Railway Co.*, 31 Ark. 701; *Vinsant* v. *Knox*, 27 Id. 266; *Moody* v. *State*, 48 Ala. 115: *Gaines* v. *Horrigan*, 4 Lea (Tenn.) 608; *Railroad Tax Cases*, 13 Fed. Rep. 722; *Jones* v. *Hutchinson*, 43 Ala. 721; *Southwark Bank* v. *Commonwealth*, 26 Pa. St. 446; *Gardner* v. *Collector*, 6 Wall. 489; *State* v. *Gould*, 31 Minn. 189. See *Koehler* v. *Hill*, 60 Iowa 543; *Bound* v. *Railroad Co.*, 45 Wis. 543.

To hold that the legislative journals are not appropriate evidence on the question whether a bill had been passed by the constitutional number of votes would in effect be to hold that a bill *may* become a law without receiving the number of votes required by the constitution; that a single presiding officer may, by his signature, give the force of law to a bill which the journal of the body over which he presides, and which is kept under the supervision of the whole body, shows not to have been voted for by the constitutional number of members: *Fordyce* v. *Godman*, 20 Ohio St. 1. The Supreme Court of the United States say: "We are of opinion, therefore, on principle as well as authority, that whenever a question arises in a court of law of the existence of a statute, or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it, have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question; always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule:" *Gardner* v. *Collector*, 6 Wall. 499. The validity of a statute is a question of law, and the court will not act upon the admission of parties that it has not been passed in a constitutional manner: *Happel* v. *Brethauer*, 70 Ill. 166. See *Ottawa* v. *Perkins*, 94 U. S. 268; *Post* v. *Supervisors*, 105 Id. 667; *Railroad Tax Cases*, 13 Fed. Rep. 767.

Notice of Application for Enactment of Law.—The constitution of Alabama provides that "no local or special law shall be passed on any subject which cannot be provided for by a general law, unless notice of the intention to apply therefor shall have been pub-

lished," &c. In *Harrison* v. *Gordy*, 57 Ala. 49, the legislative journal showed that the notice given was of intention to apply for an act prohibiting the sale of liquors within four miles of the court-house at St. Stephens. The bill corresponded with the notice, but was amended to embrace an area of eight miles. In reply to the contention that the notice did not warrant the act, the court said that it was perfectly consistent with all that appeared in the journals that the notice embraced the larger area. It will not be presumed from the silence of the journals that the prescribed notice was not given, and that the required proof of it was not made: *Walker* v. *Griffith*, 60 Ala. 361. In North Carolina, under a similar provision, the signatures of the presiding officers make the law a matter of record, and it cannot be impeached collaterally. In Arkansas a law having for its object the settlement of a debt due from the citizens of the state to it, and its debt due to them, is not within the scope of the constitutional requirement, not being, it seems, local or special: *State* v. *Crawford*, 35 Ark. 237. In Florida the prohibition of the constitution concerning the amendment of acts of incorporation, unless notice had been given, could not control the legislature in the matter of legislation concerning roads belonging to the system of internal improvements which the constitution made it the duty of the legislature to create and encourage: *Palmer* v. *Louisville, &c., Railroad Co.*, 19 Fla. 231.

The constitution of Rhode Island requires that when a bill shall be presented for the creation of certain corporations it shall be continued until another election of members of the general assembly shall have taken place, and that such public notice of the pendency thereof shall be given as may be required by law. The Supreme Court of Maine has held these provisions to be directory merely, and not to affect corporations unless in case of intervention by the state. After charter is granted, the presumption is that all preliminary requirements have been complied with: *McClinch* v. *Sturgis*, 72 Me. 288. A statute requiring that notice of private petitions pending before the legislature should be given in a prescribed manner, held to be merely directory. The legislature might act upon a notice which did not comply with the statute, or without notice: *Day* v. *Stetson*, 8 Me. 365.

The Enacting Style.—An enacting style is prescribed by nearly all the State constitutions. In his work on the Law and Practice of Legislative Assemblies, p. 820, Cushing says: "Where enacting

words are prescribed, nothing can be a law which is not introduced by these very words, even though others which are equivalent, are at the same time used." The authorities do not sustain this statement, and are not harmonious. The direction is not mandatory, and the omission of the words "by the general assembly of Maryland" from the enacting clause, does not render the act void: *McPherson* v *Leonard*, 25 Md. 377. An act without an enacting clause is void: *Seat of Government Cases*, 1 Wash. Ter. 135. When a bill adopting a body of laws, divided into separate chapters, is preceded by the required words, it is sufficient: *Dew* v. *Cunningham*, 28 Ala. 466. But when sections and chapters of a code or revision are passed at different times, such of them as do not contain an enacting clause are void: *Vinsant* v. *Knox*, 27 Ark. 266. Literal compliance with the words used in the constitution is not essential. "Resolved," held equivalent to "be it enacted," in a joint resolution which had the force of law: *Swann* v. *Buck*, 40 Miss. 268. The style prescribed for laws is inapplicable to a "resolution, order or vote," as contradistinguished from a "bill," by the constitution: *State* v. *Delesdenier*, 7 Tex. 76. Whether it is mandatory or directory only as to laws is discussed but not decided in *Navigation Co.* v. *Galveston*, 45 Tex. 287. A statute is not void because when introduced the bill had no enacting clause: *Powell* v. *Jackson Com. Council*, 51 Mich. 129. Where the enacting clause is stricken out of a bill, and the house which struck it out subsequently passed the bill, the journal not showing a reconsideration of the first vote, the passage of the bill held to be tantamount to a rescission thereof: *Wenner* v. *Thornton*, 98 Ill. 156.

In West Virginia the force and effect of law cannot be given to a joint resolution: *Boyers* v. *Crane*, 1 West Va. 176.

A statute providing that the form of an ordinance by the county board of supervisors should be: "The county board of supervisors of the county of —— do order and determine as follows," is mandatory, and was not complied with by proceedings disclosed by the record to be as follows: "On motion of —— the board of supervisors do order and determine:" *Smith* v. *Sherry*, 54 Wis. 114. In *Austrian* v. *Guy*, 21 Fed. Rep. 500, the same statute was considered, and was held to be complied with by an order as follows: "It is understood, ordered and determined."

Several readings.—Provisions requiring that all bills of a gen-

eral character, or all bills appropriating money, or certain other classes of bills shall be read at length one or more times on one or more days, are embodied in a number of constitutions. In some states the requirement is held to be mandatory, and that failure to comply will invalidate the law: *People* v. *Campbell*, 8 Ill. 466, limited by *Supervisors* v. *People*, 25 Id. 181; *People* v. *Starne*, 35 Id. 121; *Supervisors* v. *Heenan*, 2 Minn. 330; *State* v. *Hagood*, 13 S. C. 46. In others it is merely directory: *Usener* v. *State*, 8 Tex. App. 177; *Blessing* v. *Galveston*, 42 Tex. 641. Its observance is secured by the sense of duty and the official oaths of members of the legislature, and not by any supervisory power of the courts: *Kilgore* v. *Magee*, 85 Penn. St. 401; *Miller* v. *State*, 5 Ohio St. 275.

Where the journals show that a bill was passed, and contain nothing to show that it was not read as the constitution requires, the presumption is that it was so read, and this presumption is not liable to be rebutted: *Miller* v. *State*, *ante*; *Supervisors* v. *People*, 25 Ill. 181; qualifying *Campbell* v. *People*, 8 Id. 466; *Walker* v. *Griffith*, 60 Ala. 361; *State ex rel.* v. *Hastings*, 24 Minn. 43; *Vinsant* v. *Knox*, 27 Ark. 279; *English* v. *Oliver*, 28 Id. 317; *Worthen* v. *Badgett*, 32 Id. 516; *Usener* v. *State*, 8 Tex. App. 177; *Blessing* v. *Galveston*, 42 Tex. 641. If the journals are kept loosely the law will be sustained if compliance with the constitution can be spelled out: *Supervisors* v. *Heenan*, 2 Minn. 330. If a third reading is shown two previous readings will be implied and the act upheld: *English* v. *Oliver*, *ante*.

The constitution now in force in California provides: "Nor shall any bill become a law unless the same shall be read on three several days in each house, * * * and on the final passage of all bills they shall be read at length." In *Weill* v. *Kenfield*, 54 Cal. 111, this is construed as requiring every bill to be read at length on three separate days in each house, and that the silence of the journals as to the suspension of the rule does not support the presumption that the bill was read. See *Railroad Tax Cases*, 13 Fed. Rep. 722, 766. The first clause quoted above is in the constitution of South Carolina, and the doctrine of *State* v. *Hagood*, *ante*, is to the effect that the readings must be shown from the journals, or the original bill, or both. Under a similar provision in the constitution of Texas, the contrary rule is established: *Usener* v. *State*, 8 Tex. App. 177; *Blessing* v. *Galveston*, 42 Tex. 641.

If a bill, after being twice read in the house to which it is sent for concurrence, is recalled by the house in which it originated, one additional reading after its return to the house from which it was recalled, is a substantial compliance: *State* v. *Crawford*, 35 Ark. 237. A bill may be read the first time in the house to which it is sent for concurrence on the same day of its passage by the other house: *Chicot Co.* v. *Davies*, 40 Ark. 200; *State* v. *Crawford*, *ante*.

A slight change in the title of a bill will not invalidate the readings it had before the change was made: *Larrison* v. *Peoria*, *etc.*, *Railroad Co.*, 77 Ill. 11; *Walnut* v. *Wade*, 103 U. S. 683; *Plummer* v. *People*, 74 Ill. 361. If the identity of the bill can be ascertained from the journals, and the change is not one of substance and apt or calculated to mislead, the validity of the act will not be affected: *Supervisors* v. *Heenan*, 2 Minn. 330.

Where it is required that the bill shall be read at length it is not necessary that everything which is to become law by its enactment should be read. In *Bibb County Loan Association* v. *Richards*, 21 Ga. 592, it is ruled that a statute incorporating a loan association and making all its transactions by and with its members, whilst acting under and by virtue of certain authority, valid and binding in law, was valid, notwithstanding the transactions to which reference was made were not incorporated in the statute and were not read. In *Dew* v. *Cunningham*, 28 Ala. 466, it is remarked that to construe this provision to include everything which is to become law by the enactment of a bill, would exclude the power to make comprehensive enactments.

Are amendments required to be read?—In *Miller* v. *State*, 5 Ohio St. 275, the bill originally introduced, after being read twice, and on different days, was referred to a select committee, who reported it back with one amendment, to wit, "strike out all after the enacting clause and insert a new bill;" this bill was subsequently amended and then agreed to, read the third time and passed. It was argued that this "new bill" should have been read three times. In reply, the court say: "But, for argument's sake, let it be admitted that the bill as amended was read but once in the senate; is the act, for that reason, void? That, counting the two readings before the amendment, and the final reading, the bill was read three times, is conceded, for these readings are shown by the journal, and it is also conceded that, in general, three readings of an amendment are not necessary. But inasmuch as the amend-

ment in this case is styled in the journal "a new bill" it is said that three readings were necessary. Why necessary? The amendment was none the less an amendment because of the name given it. * * * When the subject or proposition of the bill is thereby wholly changed, it would seem to be proper to read the amended bill three times, and on different days; but when there is no such vital alteration, three readings of the amendment are not required." In *Ferguson* v. *Miners' Bank*, 3 Sneed (Tenn.) 609, there is no direct adjudication, but it is said that adopting amendments of a character entirely distinct from that of the bill, on its third and last reading, has the appearance, at least of an evasion of the constitution. If the new matter is not germane to that of the original bill, it would seem to be a new bill, although it may be called an amendment, and if so, should be read three times instead of once in each house. In *English* v. *Oliver*, 28 Ark. 317, the rule in *Miller* v. *State*, *ante*, was followed. The court say: "The proceedings appear to have been irregular, or that a complete journal was not made of all that was done. It is not affirmatively shown how this substitute bill came before the house, nor is it affirmatively shown that it was read a first and second time, but the journal shows that it was read a third time. To have a third reading would imply a first and second, and there is nothing before us to show that such readings were not had." Amendments are not embraced within the meaning of the constitution of Illinois: *People ex rel.* v. *Wallace*, 70 Ill. 680; nor in South Carolina, it seems: *State* v. *Platt*, 2 S. C. 150, 156.

Suspension of Rule requiring Several Readings.—In cases of "urgency" or "emergency" the rule concerning readings may be suspended by a majority or two-thirds vote. Whether any given state of circumstances present a "case of urgency" authorizing a suspension of this rule is solely for the legislature to determine; and the reasons for its action need not be given in the journals: *Hull* v. *Miller*, 4 Neb. 503. Where the journals recite that by a yea and nay vote the readings were dispensed with, the presumption is that the vote was a two-thirds vote, and that there was a case of emergency: *McCulloch* v. *State*, 11 Ind. 424. When the required number of readings are shown on the same day a strong and *prima facie* implication arises that the suspension of the rule was deemed expedient: *Turley* v. *County of Logan*, 17 Ill. 151. Where it is

not required that the journals affirmatively show that the rules were suspended, and the bill was read by title, the presumption is that they were suspended: *Chicot County* v. *Davies*, 40 Ark. 200; *Vinsant* v. *Knox*, 27 Id. 278; *English* v. *Oliver*, 28 Id. 320.

Setting out Revised, Altered or Amended Acts at Length.—In some constitutions provisions are to be found of the same import as the following from the constitution of Michigan: "No law shall be revised, altered or amended by reference to its title only, but the act revised or section or sections of the act altered or amended shall be re-enacted, and published at length." In *People* v. *Mahaney*, 13 Mich. 481, it is said: "This constitutional provision must receive a reasonable construction, with a view to give it effect. The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty of making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not re-published, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation."

This provision is not merely a rule of procedure for the legislature, but renders null and void any law which does not conform to it. It is binding upon all branches of the government. *Tuskaloosa Bridge Co.* v. *Olmstead*, 41 Ala. 9; *Smails* v. *White*, 4 Neb. 353; *Sovereign* v. *State*, 7 Id. 409; *Walker* v. *Caldwell*, 4 La. Ann. 297; *McGhee* v. *State*, 2 Lea (Tenn.) 622.

It makes no difference whether the intention to amend appears from the title or body of the act; if it has that effect it is within this provision: *Smails* v. *White*, *ante*. In Indiana an act is not within the constitution unless it professes to amend some act or section of an existing law: *Blakemore* v. *Dolan*, 50 Ind. 194. This is the general rule. See *People* v. *Mahaney*, 13 Mich. 481; *Lake* v. *Palmer*, 18 Fla. 501; Cooley's Cons. Lim. *152, note 3. Statutes which amend or repeal by implication are not embraced: *State* v. *Draper*, 47 Mo. 29; *Geisen* v. *Heiderich*, 104 Ill. 537; *Fleischner* v. *Chadwick*, 5 Ore. 152; *State* v. *Cain*, 8 W. Va.

720; *State* v. *Geiger*, 65 Mo. 306; *Lehman* v. *McBride*, 15 Ohio St. 573. In *People* v. *Whipple*, 47 Cal. 592, it is determined that it is competent for the legislature, in creating an office, to define the duties of the incumbent by making reference to another and existing statute, and to provide that those duties shall be the same as required by the act so referred to. In consequence, of the rule that repeals by implication are not favored, the repugnance between the earlier and former statutes must be irreconcilable, or this rule will not be applied: *State* v. *Draper*, *ante*.

A complete law which of itself covers the entire subject with which it deals is not in this provision: *Jones* v. *Davis*, 6 Neb. 33; *People* v. *Wright*, 70 Ill. 388; *Commonwealth* v. *Drewry*, 15 Gratt. 1; *Ex parte Pollard*, 40 Ala. 77; *Davis* v. *State*, 7 Md. 151; *Parkinson* v. *State*, 14 Id. 184. An act is independent when it embraces matter not previously legislated upon, or it may be independent when there is a law upon the subject, and the act does not attempt to amend such law, but makes a new enactment: *Blakemore* v. *Dolan*, 50 Ind. 194. A law is revised or amended when it is in whole or part permitted to remain, and something is added to or taken from it, or it is in some way changed or altered to make it more complete or perfect, or to fit it the better to accomplish the object or purpose for which it was made, or some other object or purpose: *Falconer* v. *Robinson*, 46 Ala. 340.

If a section or part of a law is obnoxious to this provision, the validity of the other parts or sections is not thereby affected, if capable of separation: *Ex parte Pollard*, 40 Ala. 77.

The later cases generally hold that the requirement of the constitution is complied with by setting out at length the act or section revised or amended as it is with the amendment or revision embodied in it: *People* v. *Pritchard*, 21 Mich. 236; *Portland* v. *Stock*, 2 Ore. 69; *Lehman* v. *McBride*, 15 Ohio St. 573; *Van Riper* v. *Parsons*, 40 N. J. L. 123; *Colwell* v. *Chamberlain*, 43 Id. 387; *People* v. *McCallum*, 1 Neb. 182. In Louisiana and Indiana it was formerly held that it was necessary to set out the law in full as it stood before amendment or revision: *Langdon* v. *Applegate*, 5 Ind. 327; *Wilkins* v. *Miller*, 9 Id. 102; *Rogers* v. *State*, 6 Id. 31; *Kennon* v. *Shull*, 9 Id. 154; *Armstrong* v. *Berreman*, 13 Id. 422. These cases were overruled in *Greencastle, etc., Co.* v. *State*, 28 Id. 382, which has been adhered to ever since. The Louisiana cases (*Walker* v. *Caldwell*, 4 La. Ann. 297; *Heirs of*

Duverge v. *Salter*, 5 Id. 94), which were the basis of the rule originally established in Indiana, appear to be overruled in *Arnoult* v. *New Orleans*, 11 La. Ann. 54.

Under the peculiar phraseology of the constitution of Missouri, where an entire act is revised or re-enacted, it must be set forth and published in whole; where the whole act is amended the same course must be pursued, but where only a part of an act is amended the amendatory part only need be set out and published: *Mayor* v. *Trigg*, 46 Mo. 288.

The constitution of Tennessee requires that "All acts which revive, repeal or amend former laws shall recite, in their caption or otherwise, the title or substance of the law repealed, revived or amended." This applies to repeals by implication: *McGhee* v. *State*, 2 Lea 622. It does not require a recital of the substance of an act any further than it is amended or repealed. If the substance of that part of the act which is to be amended or repealed is recited, it is sufficient: *State* v. *Gaines*, 1 Id. 734.

The constitution of New York provides that "no act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act." In *People ex rel.* v. *Banks*, 67 N. Y. 568, it is remarked that "It is not necessary, in order to avoid a conflict with this article of the constitution, to re-enact general laws whenever it is necessary to resort to them to carry into effect a special statute. Such cases are not within the letter or spirit of the constitution, or the mischief intended to be remedied. By such a reference the general statute is not incorporated into or made a part of the special statute, but the enforcement of the right or duty, and the final imposition of the burden are directed to be in the form, and by the procedure given by the other and general laws of the state." In *Wells* v. *Buffalo*, 14 Hun 438, it is decided that this provision does not contemplate that in an act amending a prior one, the whole of the latter should be copied into it. It "should only be applied when in a subsequent statute another act is referred to, not to amend it, but to give effect to the provisions of the new. In other words, the new act must, by its express terms, provide that an existing law shall be made or deemed a part of it. This is not done when the new act merely amends the former."

Miscellaneous Provisions.—The constitution of Michigan provides

that "no new bill shall be introduced into either house of the legislature after the first fifty days of a session shall have expired." In *Pack* v. *Barton*, 47 Mich. 520, within the prescribed time a bill was offered for the organization of the township of Montmorency, and after the expiration of that time it was so changed as to provide for the organization of a county with that name. The purpose of each proposition was practically the same—to give the inhabitants of the territory a distinct municipal government. There was nothing to give rise to any inference that in the change made there was a purpose to evade the constitutional command. It was held that the act was not invalid. To the same effect is *Powell* v. *Jackson Common Council*, 51 Mich. 129.

It is provided by the constitution of Arkansas that "no bill shall be so altered or amended on its passage, through either house, as to change its original purpose." An amendment which limits or extends the scope of the bill, but embraces no new matter not germane to its original purpose, is not within this provision: *Loftin* v. *Watson*, 32 Ark. 414.

The Required Vote.—Some courts distinguish between the constitutional requirements concerning the mode of enacting laws and the authority by which they are enacted, and will take notice of the journals where the validity of the law is challenged on the ground that it did not receive the assent of the legislature, but will not do so where a disregard of the prescribed forms of legislation is relied upon to overturn it: *Miller* v. *State*, 5 Ohio St. 275; *Fordyce* v. *Godman*, 20 Id. 1; *Kilgore* v. *Magee*, 85 Penn. St. 401, are instanced. In the last case the court observe: "The evidence of a law—its actual existence—we may inquire into; for before we are bound by it we must be satisfied it is the act of the legislature, however informally they may have conducted the process by which they have made it a law. See *Southwark Bank* v. *Commonwealth*, 26 Penn. St. 446.

Where the vote on the passage of bills is not required to be taken by yeas and nays and entered on the journal, the presumption arising from the signatures of the presiding officers to the enrolled act will overcome their silence: *Williams* v. *State*, 6 Lea (Tenn.) 549; *In re Roberts*, 5 Colo. 525; *State* v. *Mead*, 71 Mo. 266; *Worthen* v. *Badgett*, 32 Ark. 496. But where the aye and nay vote is required to be entered on the journal, it must affirmatively appear that the bill received a constitutional majority: *Post* v. *Supervisors*, 105

U. S. 677; *Hull* v. *Miller*, 4 Neb. 305; *Supervisors* v. *Heenan*, 2 Minn. 330; *Green* v. *Graves*, 1 Doug. (Mich.) 351; *Spangler* v. *Jacoby*, 14 Ill. 297; *People* v. *Starne*, 35 Id. 121; *Ryan* v. *Lynch*, 68 Id. 160; *Fordyce* v. *Godman*, 20 Ohio St. 1; *People* v. *De Wolf*, 62 Ill. 253; *Opinion of Justices*, 35 N.H. 579; *Railroad Tax Cases*, 13 Fed. Rep. 722; *County of Santa Clara* v. *Southern Pacific Railway Co.*, 18 Id. 385; *State* v. *Francis*, 26 Kans. 724; *Bond Debt Cases*, 12 S. C. 200. Where the journal shows that a bill did not receive the required two-thirds vote on its third reading in the house, but that it did upon its final passage by that body after it was returned from the other body with slight amendments, it shows a substantial compliance: *Bond Debt Cases*, *ante*. Names of members who vote in the negative must appear as well as of those who vote in the affirmative: *Smithee* v. *Garth*, 33 Ark. 17. A bill which the journal shows to have been indefinitely postponed, and which it does not show was ever taken up again, is not a law: *Burr* v. *Ross*, 19 Ark. 250.

In *Steckert* v. *East Saginaw*, 22 Mich. 104, the charter required that the vote of the city council in certain cases should be entered on the minutes. It was held not to be complied with by a record which showed that a vote was adopted unanimously on call, the names not appearing.

The provision of the constitution of New York requiring the question upon the final passage of a bill to be taken immediately upon its last reading and the yeas and nays to be entered on the journal, is only directory to the legislature. There is no clause declaring the act to be void if this direction be not followed: *People* v. *Supervisors*, 8 N. Y. 317.

Amendments may be concurred in without entry of yeas and nays in journal: *Com.* v. *Higginbotham*, 17 Kans. 62; *Haynes* v. *Heller*, 12 Id. 383; *Hull* v. *Miller*, 4 Neb. 503.

The constitution of West Virginia provides that no bill shall be passed by either branch without an affirmative vote of the majority of the members elected thereto. The senate was comprised of twenty-two members, one of whom had resigned his seat after its organization. An act which received eleven votes after such resignation was held valid: *Osburn* v. *Staley*, 5 W. Va. 85. "Two-thirds of the members of each branch of the general assembly," means two-thirds of the members present, a quorum voting: *Morton* v. *Comptroller-Gen.*, 4 S. C. 430; *Bond Debt Cases*, 12 Id. 200.

"Two-thirds vote," as these words are used in the constitution of Minnesota, means a vote in each house of two-thirds of all the members thereof: *State* v. *Gould*, 31 Minn. 189.

In *People* v. *Mahaney*, 13 Mich. 481, the court was asked to declare an act unconstitutional because a portion of those who voted for it were not legally elected. It was held that this could not be done; that while the court was bound to take notice of legislative action concerning the validity of statutes, it could not do so in regard to the facts attending the election of members, even though the facts are to be found in the journals; that an act cannot be declared void because a portion of those who voted for it, and whose votes were essential to its passage, were not legally elected and were retained in their seats by a decision opposed to the constitution.

The house of representatives of Kansas consisted of four more persons than the maximum number provided for by the constitution. An act was passed by the aid of the votes of three of the four persons who were not entitled to seats, but who were admitted by the action of the house. It was held void: *State* v. *Francis*, 26 Kans. 724.

Signatures of Presiding Officers.—In states where the enrolled bill is conclusive as to the regularity of the proceedings, and the signatures of the presiding officers thereto are required by the constitution, the only evidence that the bill has passed is furnished thereby. Their signatures are absolutely essential to the existence of the law: *State* v. *Glenn*, 1 West Coast Rep. 50; *Pacific Railroad Co.* v. *Governor*, 23 Mo. 353; *Evans* v. *Browne*, 30 Ind. 523; *Broadnax* v. *Groom*, 64 N. C. 244; and are evidence of its passage over the executive veto: *Pacific Railroad Co.* v. *Governor*, *ante*. It is intimated in *Gaines* v. *Horrigan*, 4 Lea (Tenn.) 608, that the requirements of the new constitution that all bills shall be signed in open session and that the fact of signing shall be entered on the journal, is intended to furnish conclusive evidence that they were passed.

The constitution of Missouri provides that "no bill shall become a law until the same shall have been signed by the presiding officer of each house in open session." This requirement is mandatory: *State* v. *Mead*, 71 Mo. 266. Other provisions, such as requiring him, before affixing his signature, to suspend all other business, declare that such bill will now be read, and that the fact of signing

shall be noted on the journal, are merely directory: Ibid. The same rule, as to the fact of signing being noted on the journals, is held in Colorado: *In re Roberts*, 5 Colo. 525. In Nebraska it is provided that "the presiding officer of each house shall sign publicly, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and joint resolutions." In *Cottrell* v. *State*, 9 Neb. 125, it is said that the signatures are merely a certificate to the governor that the bill has passed the requisite number of readings and been adopted by the constitutional majority. Where the journals show that the bill has received the required vote, and it has been approved, failure of the presiding officer of either house to attach his signature will not invalidate it. This is the rule in Kansas: *Commissioners* v. *Higginbotham*, 17 Kans. 62. At common law signatures are not necessary: *Speer* v. *Plank-Road Co.*, 22 Penn. St. 376.

The constitution of Nevada requires the signatures of the presiding officers, and also of the secretary of the senate and clerk of the assembly. The signature of the assistant secretary of the senate is held to satisfy the requirements of the secretary's signature. *State* v. *Glenn*, 1 West Coast Rep. 50. No little stress is laid on the established legislative custom and the dire consequences which would result from establishing the contrary doctrine.

Under a statute directing the presiding officers, when a bill requires three-fifths of all the members elected to be present at its final passage, to certify such fact, and making the certificate presumptive evidence of the fact, it was ruled that it was not competent for the legislature to make the failure of its officers to append the proper certificate, defeat the provisions of the constitution. *People* v. *Supervisors*, 8 N. Y. 317. The certificate might be impeached if it certified that the requisite number was present when the fact was otherwise; and if the certificate was not given, the fact that three-fifths were present might be shown from the journals or other proper evidence. Ibid. In *People* v. *Commissioners*, 54 N. Y. 276, it is ruled that laws which come under the constitutional provision requiring two-thirds of the members elected to vote therefor, are not valid if it does not appear from the statute book or the enrolled act that they received the required number of votes. In such cases, where the bill is only certified in the form of an ordinary majority bill, it is at least *prima facie* evidence that it did not receive a two-thirds vote. *People* v. *Purdy*, 2 Hill 34.

Value of Journals as Evidence.—The conflict of opinion between the two lines of authority concerning the effect to be given to legislative journals is well illustrated by the language of Judge BLACK in 9 Op. Attys.-Gen. 1, and the rule of the New Hampshire court in the opinion of the justices, 52 N. H. 622. In *Thompson's Case*, Judge BLACK says that, to make all legislation ultimately depend on the fidelity with which a journal-clerk has made his entries, is to render the law as uncertain as the terms of a horse-trade. The New Hampshire court say that the journals are to be considered and treated as authentic records of the proceedings of the legislature, and that the *prima facie* evidence arising from the enrolled act is overcome by their showing that the act did not pass. See 35 N. H. 579. The only provision in the constitution of New Hampshire concerning journals is that the journal of the proceedings shall be printed and published immediately after adjournment of the legislature. The rule in New Hampshire is substantially the same as that in Illinois: *Spangler* v. *Jacoby*, 14 Ill. 297 : *Prescott* v. *Trustees*, 19 Id. 324; *People* v. *Starnes*, 35 Id. 121; *Ryan* v. *Lynch*, 68 Id. 160; *Miller* v. *Goodwin*, 70 Id. 659. To the same effect is *Weild* v. *Kenfield*, 54 Cal. 111; *Fordyce* v. *Godman*, 20 Ohio St. 1; *Brady* v. *West*, 50 Miss. 78.

The silence of the journals is conclusive only in those matters where the constitution requires them to show the action taken: *Chicot County* v. *Davies*, 40 Ark. 206. If the facts which the constitution requires the journal to set forth do not appear the conclusion is that they did not transpire: *Spangler* v. *Jacoby*, *ante*. Silence concerning compliance with constitutional requirements supports the presumption of correct action : *In re Roberts*, 5 Colo. 525; *State* v. *Mead*, 71 Mo. 266; *Miller* v *State*, 5 Ohio St. 275; *Worthen* v. *Badgett*, 33 Ark. 496. See *Walker* v. *Griffith*, 60 Ala. 361; *Harrison* v. *Gordy*, 57 Id. 49.

The recital of the journal are verities. The house keeping it is the only tribunal by which it can be corrected: *McCulloch* v. *State*, 11 Ind. 424. Obvious clerical errors in the journal will be disregarded: *Bound* v. *Railroad Co.*, 45 Wis. 543; *Williams* v. *State*, 6 Lea (Tenn.) 549. Journals may be corrected at any session of the same legislature: *Turley* v. *County of Logan*, 17 Ill. 151. If there is a discrepancy between the printed and the manuscript journals the latter will prevail: *County of Santa Clara* v. *Southern Pacific Railway Co.*, 18 Fed. Rep. 285; *Chicot County*

v. *Davies*, 40 Ark. 200 The requirement to keep a journal does not make it necessary that it should be signed, or that the accuracy of the copy thereof be certified to: *Miller* v. *Goodman*, 70 Ill. 659. J. R. BERRYMAN.

Madison, Wis.

RECENT ENGLISH DECISIONS.

Queen's Bench Division.

HAINES *v.* GUTHRIE.

In an action for the price of goods sold and delivered the defendant pleaded infancy. He sought to prove the plea by a statement contained in an affidavit made in a chancery suit, to which the plaintiff was not a party, by the defendant's fatner, since deceased.

Held, that there being no question of pedigree in the case, the evidence was not admissible.

APPEAL of the defendant from the judgment of STEPHEN and MATHEW, JJ.

In an action for 731*l.* for goods sold and delivered, the defendant pleaded that at the time of the alleged purchase he was an infant under the age of twenty-one years, and that the things were not necessaries. The trial before GROVE, J., and a special jury resulted in a verdict for the plaintiff for 4*l.* 16*s.*, for things which were found to be necessaries. The plaintiff applied for a new trial, on the ground of the improper reception of evidence in favor of the defendant.

The evidence in question was admitted in support of the plea of infancy, and consisted of a statement as to the date of the defendant's birth, contained in an affidavit made in a chancery suit, to which the plaintiff was not a party, by the defendant's father, who had since died.

STEPHEN and MATHEW, JJ., having ordered a new trial,

The defendant appealed.

Willis, Q. C., and *L. Glyn*, for the defendant.

Lumley Smith, Q. C., and *H. D. Greene*, for the plaintiff.

BRETT, M. R.—In this case the action was for the price of certain goods sold by the plaintiff to the defendant, and the sale must have been either for an agreed price or for a reasonable price. The